## REMARKS

Prior to the Office action mailed April 5, 2007, claims 93-109 were pending. In the Office action, claim 98 has been withdrawn from consideration. Claims 103, 104, 106, and 107 are objected to as depending upon a rejected claim. Claims 93-97, 99, 100, 105, 108, and 109 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 93-97, 100-102, 105, 108, and 109 are rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,815,426 (hereafter "the '426 patent"). Each of these objections and rejections are addressed below.

*Restriction of claim 98*

The Office has withdrawn claim 98 as being drawn to a non-elected species, on the basis that the prior art identified by the office anticipates or renders obvious the Markush-type claim (i.e., claim 93). As applicants show below, the art cited by the office is not prior art to the present application, and thus cannot form the basis for a rejection of claim 93, from which claim 98 depends. Applicants thus submit that it would be proper for the Office to examine claim 93 over its full scope and, further, that it would not present an undue burden on the Office to consider the species encompassed by claim 98 in the present application. Applicants thus respectfully request that the Office reconsider its decision to withdraw claim 98 from consideration.

*Rejection under 35 U.S.C. § 112, second paragraph*

The Office rejects claims 93-97, 99, 100, 105, 108, and 109 under 35 U.S.C. § 112, second paragraph, as indefinite. In particular, the Office rejects claim 93 on the basis that R2 is not defined in any way. Without assenting to this rejection, applicants have amended claim 93 to indicate that R2 represents the C-terminal acid or amide group of the C-terminal amino acid X3 and that R2 may be an OH or $NH_2$, respectively. Claims 101 and 102 have been amended to correspond with the language of amended claim 93. These amendments add no new matter. Claim 93 is further rejected for reciting that X1 or X2 may be "0," which the Office asserts is unclear. Without assenting to this rejection, applicants have deleted the language relating to "0" from claim 93, thereby rendering this rejection moot. This amendment likewise adds no new matter. In view of these changes, applicants submit that claim 93 and its dependent claims are free from the § 112, second paragraph, rejection raised by the Office. This rejection may be withdrawn.

*Rejection under 35 U.S.C. § 102*

The Office also rejects claims 93-97, 100-102, 105, 108, and 109 under 35 U.S.C. § 102(a) as anticipated by the '426 patent. 35 U.S.C. §§ 102(a) and 102(b) recite:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

> b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Applicants submit that the neither '426 patent (issued November 9, 2004) nor its corresponding pre-grant publication (published February 6, 2003) qualify as prior art under either of these sections of the statute, as the patent and the pre-grant publication published later than the effective priority date of the claims pending in the present application.

The present application is a continuation of International Application No. PCT/US02/05773, filed February 22, 2002, which, in turn, claims benefit of three applications: U.S. Provisional Application No. 60/314,470 (the '470 application), filed August 23, 2001; U.S. Application No. 09/792,286, filed February 22, 2001; and International Application No. PCT/DK01/00127, filed February 22, 2001. Support for the currently pending claims is found, for example, in the '470 application; see, e.g., page 140, lines 21-28. Thus, the 2003 and 2004 publication dates of the '426 patent and its corresponding pre-grant publication are later than the effective filing date of the pending claims in the present application. On this basis, the '426 patent is not prior art under either 35 U.S.C. § 102(a) or § 102(b). The § 102(a) rejection may therefore be withdrawn.

Although a rejection under 35 U.S.C. § 102(e) has not been raised by the Office, the material relied upon by the Office in its § 102(a) rejection is also not prior art under § 102(e). The M.P.E.P. states (§ 2136.03(III), emphasis added):

> The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions <u>if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph</u>.

The '426 patent was filed February 12, 2002, claiming priority from U.S. Provisional Application No. 60/269,537, filed February 16, 2001. Applicants note that the subject matter relied upon in the § 102(a) rejection is not found in the earlier provisional application. Thus, this subject matter must be accorded the later February 12, 2002 reference date, whereas the pending claims find support in the '470 application, filed August 23, 2001. Accordingly, the material relied upon by the Office also is not prior art under § 102(e).

*Claim Objections*

Claims 103, 104, 106, and 107 are objected to as depending from a rejected claim. In view of the amendments and arguments presented herein, applicants respectfully request that this objection be withdrawn.

## CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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Kristina Bieker-Brady, Ph.D.
Reg. No. 39,109

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045